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WRITTEN TESTIMONY OF SUSAN D. PAGE, NDI REGIONAL DIRECTOR FOR
SOUTHERN AND EAST AFRICA, TO THE
U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM,
WEDNESDAY, SEPTEMBER 24, 2008, RAYBURN HOUSE OFFICE BUILDING

General Comments/A View from Inside the Mediation

The January 9, 2005 CPA resulted out of an African-led mediation under the auspices of the InterGovernmental Authority on Development (IGAD), led by Kenya's Lt. Gen. Lazaro K. Sumbeiywo, with financial, technical, and moral support from the U.S., UK, Norway, Italy, and other international partners. The basic tenets of the CPA are radically different from the 1972 Addis Ababa Agreement; the CPA stipulates participation by Southerners at the National/central level, creates a power sharing government at all levels with stipulated but temporary percentages that shall be "confirmed"; on the basis of the census results.

The stated focus of the CPA is to make the unity of the Sudan attractive during the Interim Period. But splits in the SPLM became clear with the tragic death of Dr. John Garang in August 2005. With Garang's passing, many in the SPLM shifted their vision to one focusing on the South and the future of the South after the referendum, to the detriment of their active political engagement in the North.

During the mediation, the U.S. in particular, insisted that the two negotiating parties hold elections in order to bring about legitimacy to the CPA arrangements and consolidate peace (e.g., from self-appointed by the two, not necessarily representative parties to elected government). The CPA and Interim National Constitution stipulate that whoever runs in any election must agree to respect and abide by the CPA - throughout the six-year Interim Period which ends with the simultaneous referenda for Southern Sudan and Abyei.

Elections-related Issues

The Constitution does not specify that elections shall be held in July 2009; rather, that elections must be held not later than the end of the fourth year of the Interim Period, the date of which is July 9, 2009.

Mixed and extremely complicated system for elections with voting at Six levels:

- o President of the Republic of Sudan (presidential run-off if candidate does not secure outright victory)
- o President of the GoSS
- o Representatives of the National Assembly
- o Representatives of the Southern Sudan Legislative Assembly
- o Representatives of all 25 state legislatures; and
- o Governors of all 25 states (Abyei is not a State)

The Political Parties Act passed in January 2007 but the Political Parties Council has yet to be established, meaning that Political Parties have not yet been registered officially under the law. Accordingly, even the junior partner in the GoNU, the SPLM, is not yet formally registered as a political party.

The National Elections Act was signed into law by President Bashir on the 14th of July, but the National Elections Commission (NEC) has yet to be established. Debate has raged in Khartoum over the composition of the NEC as the original names floated for consideration were the current co-chairs of the National Constitutional Review Commission (NCRC), Abdalla Idriss and former Second Vice President Abel Alier. However, the National Elections Law calls for a Chairperson and a Deputy Chairperson of the NEC, not co-chairs. There are rumors as well that political parties are unhappy with the nine names currently circulating for membership on this important body.

The NEC is responsible for setting the date for the elections, assuring the organization of the elections, and will serve as the primary interlocutor of international donors. However, the CPA stipulates that the Parties shall review the feasibility of the (census and) election date six months prior to the end of the scheduled period. The Interim National Constitution only provides for a 60-day delay in Presidential elections, but is silent on a delay for elections at any other levels, except in the case of emergencies.

Abyei

- Progress has been made on Abyei through the following actions:
 - o The Parties agreed to refer the ABC conclusions to the International Tribunal of Arbitration (of course, this may be seen or used by both sides as a delaying tactic as the outcome will take many months/impact on final Abyei boundary demarcation);
 - o Withdrawal of troops from the disputed area and handover from the military commands to the new Joint/Integrated Unit (JIU);
 - o Swearing in on September 1 of an SPLM Chairman and NCP Deputy of the Abyei Interim Administration; and
 - o Agreement on the return of IDPs

Joint Cooperation and Coordination

Accords on Joint Cooperation were signed between the GoNU and the Goss on September 19, 2008 to enhance cooperation and co-ordination on federal issues such as taxes, customs, passports, and, notably, on the official Sudan News Agency (SUNA) and the National Radio and Television. While still untested, there is hope that the cooperation accord will help expand access to media houses on a more fair and equitable basis.

Human Rights and Fundamental Freedoms

In addition to the new Bill of Rights based on citizenship enshrined in the Interim National

Constitution (INC), the CPA and INC also call for the establishment of a special commission to be appointed by the Presidency to ensure that the rights of non-Muslims are protected and not adversely affected by the application of Shari'a Law in the National Capital. Additionally, a system of mechanisms of guarantees was meant to be established such as the following:

- Judicial Circulars to guide the courts as to how to observe the above-mentioned principles;
- Establishment of specialized courts; and
- Establishment of specialized Attorney general circuits to conduct investigations and pre-trial proceedings related to offences involving the above-mentioned principles.

While the Commission has not been as active as many hoped, I understand that at a conference held last month in Khartoum, consensus was reached on implementing some of the specific provisions mentioned above.

Outstanding Issues

- ICC - ramifications for UNMIS and UNAMID, other UN agencies (possible expulsion);
- possible postponement of elections if Bashir is indicted; alternatives: a) hold elections as scheduled to ensure legitimacy of NCP/SPLM under Bashir and CPA arrangements; b) hold elections on schedule and put forward a Southerner/Salva Kiir as Presidential candidate; c) Put forward a different NCP presidential candidate;
- No arrest powers, so sitting indicted President will remain on the scene (even if deferral under Art. 16); deferral only for one year/must be renewed under same standard - threat to international peace and security;
- possible sanctions/refusal of bilaterals to fund or morally support elections with indictment/arrest warrant outstanding;
- Concerns about the validity of the census results in the South and in Darfur;
- No request yet to UN/EAD for electoral assistance from Khartoum; request received only from GoSS;

- Laws are not in conformity with INC: National Security Act; Public Order Act; Press and Publications Act, etc.
- NGO (Voluntary Works) Act - foreign funding and donations to domestic NGOs must be approved in advance. Not difficult to secure approval, but can be a 2-3 week process.
- Assessment and Evaluation Commission (AEC) reports to the Presidency and is not the independent body envisioned by the CPA. Recommend stepped up engagement beyond junior officer staffing from Embassies. Terms of reference should be changed to ensure AEC is neutral, independent body, not led by Parties to CPA;
- Need high-level, consistent, in-country engagement by senior level experts, including active role for General Sumbeiywo;
- Clear U.S. policy (peace vs. justice vs. anti-terrorism assistance - choice?)